CATO
RESEARCH BRIEFS
IN ECONOMIC POLICY
October 11, 2023 Number 353

On the Public Finance of Capital Punishment

By Alexander Lundberg, Northwestern University

The United States continues to face scrutiny over its status as the only Western nation with the authority to execute its citizens. Aside from moral opposition to the death penalty, critics cite disparities in its application, skepticism over its value as a deterrent, and, increasingly, the high monetary cost of its operation. Research estimates that California, for example, spent over $4 billion to fund only 13 executions since reinstating the death penalty in 1978 and that North Carolina spent $20 million maintaining the death penalty over a period of two years in which no executions were carried out. My research reveals that local governments increase property taxes and reduce public safety expenditure to finance capital trials.

Contrary to popular misconception, the major expense of the death penalty does not lie in the appeals of death sentences. Although appeals do consume resources, capital *trials* consume more resources than similar trials with a maximum sentence of life in prison. One study found that the additional trial costs exceeded those of appeals by a factor of four. Estimates of capital trial costs vary, but research has offered a middling figure of an additional $1.5 million over trials with only the potential for life in prison.

There are several reasons for the increased trial expenses. Attorneys spend more time preparing cases, and many states require the appointment of two defense attorneys for any defendant who cannot afford private counsel. Also, jury selection is more complicated. The process can take days or even weeks, partly because of the need for death-qualified jurors (i.e., individuals who neither universally oppose nor universally support the death penalty). Capital cases also produce more hearings and court filings. Expert witnesses are unavoidable. Mitigation evidence, which argues for leniency in punishment, can require a significant travel budget. These factors combine to make capital trials uniquely expensive.

Along with the military and the federal government, 27 states currently allow capital punishment. States mostly leave individual counties to fund the practice. A few activities—such as hearing automatic appeals, housing death row inmates, and, occasionally, assigning public

Editor, **JEFFREY MIRON**, Harvard University and Cato Institute.

defenders to indigent defendants—are covered by the state, but the bulk of the expense falls on the county in which a capital trial takes place.

How do counties handle the financial burden of a trial? Past research suggests that counties meet the cost of trials with higher taxes and lower police expenditure (and perhaps lower capital expenditure). Jasper County, Texas, for example, raised property taxes by 8 percent to fund a joint trial for suspects in the 1998 murder of James Byrd. Another Texas county reduced public safety expenditure after voters rejected a property tax increase. Sierra County, California, cut its police force in 1988 to cover the cost of death penalty prosecutions.

This article builds on past research with a novel data set on county financials over time in the state of Texas. I obtained data from audited financial statements of Texas counties through public information requests. Texas offers an exceptional opportunity to study how counties handle the fiscal burden of a capital trial. First, Texas law mandates the publication of all capital trial outcomes from September 2007 onward. Second, although Texas has carried out more executions than other states, its proportion of residents on death row is average. In 2020, Texas held 0.84 death row inmates per 100,000 residents, while the median figure among death penalty states was 0.82. Third, Texas is divided into more counties than any other state, and more than 50 counties held at least one trial between 2008 and 2017. Fourth, Texas has a strong commitment to financial transparency. The state constitution requires an independent auditor to provide annual financial statements for every county with more than 10,000 residents, and less populous counties are encouraged to comply voluntarily. Lastly, Texas concludes capital cases quickly. From 2007 to 2017, the median length of time between the date of a capital offense and the conclusion of the trial was 768 days.

My research finds that counties meet the cost of a trial in two ways: by increasing property taxes and by reducing public safety expenditure. The data show that property tax rates increase by an average of 0.005 percentage points in years with a capital trial. Moreover, counties reduce public safety expenditure by an average of $1.2 million in years with a capital trial. This figure is commensurate with the cost of capital trials. In 1992, capital trials in Texas cost an average of $2.3 million, and trial costs have risen steadily over time.

The biggest obstacle to accurately identifying the causal effect of capital trials on county financials is prosecutorial discretion. Since prosecutors consume a large share of the costs of the justice system, counties may attempt to pass their financial pressures on to prosecutors. More precisely, my causal estimates will be biased if prosecutors are less likely to pursue an expensive trial when a county struggles financially. However, this possibility appears unlikely. Research has shown that prosecutors do not consider the cost of a trial in their decision to pursue the death penalty. Neither county debt nor deficit levels significantly affect the probability of a capital trial. Additionally, the causal effect of capital trials on county financials would only appear lower if counties were less likely to hold capital trials amid poor financial straits. For example, if a county already spends less on public safety in a period of financial distress, a negative correlation between financial distress and the likelihood of a capital trial would reduce the ostensible impact of a trial on safety expenditure.

One incentive that prosecutors face is the pressure of job security. Most states, including Texas, select district attorneys by popular election. Prosecutors are known to modify their plea bargains and charge decisions around elections, and capital trials may be no exception. However, elections have no effect on the likelihood of a trial in my data sample. In fact, no factor that I studied has any predictive power in the number of capital trials held by counties.

My research estimates the impact of a capital trial on county finances as compared with a counterfactual world with no trial. The magnitude of the estimates may therefore overstate the true impact of the death penalty, as many of these trials would presumably be conducted in its absence at lower cost. On the other hand, prosecutors may choose to offer more plea deals, which would remove the cost of a trial (though even plea bargains are more expensive when a charge is capital). Data are unable to inform the question of whether and how often trials would convert to plea agreements or vice versa in the absence of the death penalty. However, my work does inform the question of how counties respond fiscally when prosecutors seek a capital trial over a plea deal. The impact of capital trials on increasing property tax rates and reducing public safety expenditure demonstrates a clear role of capital punishment in the public finance of local governments.

Finally, I studied how capital trials may influence crime through their effect on public safety expenditure. Public safety expenditure is an essential tool in crime prevention.

If counties reallocate funds from police to capital trials, deterrence may fall. My results suggest that when a county reduces public safety expenditure by $1,000 to $3,300, the expected annual count of property crime rises by one.

NOTE

This research brief is based on Alexander Lundberg, "On the Public Finance of Capital Punishment," *American Law and Economics Review* 24, no. 2 (March 28, 2023): 531–88.